

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:14-cv-00119-KDB
(5:03-cr-00037-KDB-13)**

TROY NAMAN POWELL,)
)
 Petitioner,)
)
 vs.)
)
)
 UNITED STATES OF AMERICA,)
)
 Respondent.)
 _____)

ORDER

THIS MATTER is before the Court on Petitioner’s Petition under 28 U.S.C. § 2255 & Alternative Petition for Writ of *Coram Nobis*. [Doc. 1]. Petitioner is represented by James Edward Quander, Jr.

On April 23, 2004, Petitioner Troy Naman Powell (“Petitioner”) pleaded guilty to conspiracy to possess with intent to distribute 5 kilograms or more of cocaine and 50 grams or more of cocaine base. [Criminal Case No. 5:03-cr-00037-KDB-13 (“CR”), Doc. 163: Acceptance and Entry of Guilty Plea; CR Doc. 258: Judgment at 1]. The advisory guidelines range pursuant to U.S.S.G. § 5G1.1 was the statutory minimum sentence of 240 months’ imprisonment and 10 years’ supervised release, which the Court imposed. [CR Doc. 767: Supplemental Presentence Report (“Supp. PSR”) at 1; CR Doc. 258 at 2].

On July 14, 2014, Petitioner filed the instant petition seeking relief from his sentence under 28 U.S.C. § 2255 or, in the alternative, under 28 U.S.C. § 1651(a) through a writ of error *coram nobis*. [See Doc. 1]. The Court ordered the Government to respond. [Doc. 2]. Upon the Government’s request, the case was stayed pending the decision of the Fourth Circuit Court of

Appeals in United States v. Surratt, No. 14-6851. [Docs. 7, 8]. On July 26, 2017, after the Fourth's Circuit's decision in Surratt was appealed to the Supreme Court, the Court stayed this case pending the Supreme Court's decision, Case No. 14-6851. [Doc. 10]. Then, on March 3, 2018, this case was stayed pending the resolution of United States v. Wheeler, Fourth Circuit Case No. 16-6073. [Doc. 12]. The Fourth Circuit decided Wheeler on March 28, 2018. United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018). On March 18, 2019, the Supreme Court declined to review the Fourth Circuit's decision. United States v. Wheeler, No. 18-420, 139 S. Ct. 1318 (2019).

On February 5, 2019, Petitioner filed an Unopposed Motion for Amended Judgment under the First Step Act of 2018. [CR Doc. 766]. Under the First Step Act, the advisory guideline range is a reduced mandatory minimum sentence of 120 months' imprisonment and 8 years' supervised release. [CR Doc. 767 at 2: Supp. PSR]. At the time of Petitioner's motion under the First Step Act, Petitioner had approximately 209 credited months in the Bureau of Prisons (BOP). [CR Doc. 767 at 2]. Petitioner, therefore, sought, and the Government consented to, a sentence of time served plus ten days followed by eight years' supervised release. [CR Doc. 766 at 1]. The Court granted Petitioner's unopposed motion and ordered this reduced sentence. [CR Doc. 768]. Accordingly, Petitioner has been released from custody.

On June 3, 2019, the Government responded to Petitioner's instant motion, arguing that the Court should dismiss Petitioner's claim for sentencing relief as moot.¹ [Doc. 18 at 1]. The Court agrees and will dismiss the petition as moot. Petitioner's claim, brought in 2014, that he is entitled to relief from an erroneous mandatory-minimum sentence no longer presents a live case or controversy for this Court's review. See U.S. Const. Art. III, § 2; Arizonians for Official English v. Arizona, 520 U.S. 43, 67 (1997) ("To qualify as a case fit for federal-court adjudication, an

¹ Petitioner did not reply to the Government's response.

actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.”) (internal quotation marks and citation omitted).

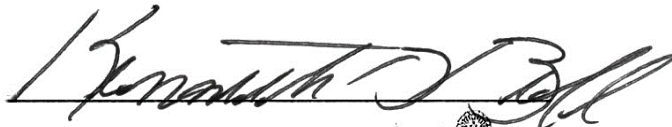
As such, because Petitioner’s claim for sentencing relief is moot, the Court will deny his petition and dismiss this action.

IT IS THEREFORE ORDERED that:

- (1) Petitioner’s Petition under 28 U.S.C. § 2255 & Alternative Petition for Writ of *Coram Nobis* [Doc. 1] is **DENIED** as moot and **DISMISSED**.
- (2) The Clerk of Court is respectfully instructed to terminate this action.

IT IS SO ORDERED.

Signed: December 19, 2019

A handwritten signature in black ink, appearing to read "Kenneth D. Bell", written over a horizontal line.

Kenneth D. Bell
United States District Judge

